IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5193 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANAVADAR NAGARPALIKA, THROUGHCHIEF OFFICER/PRESIDENT

Versus

HADIYAL VIJAYKUMAR GORDHANBHAI

Appearance:

1. Special Civil Application No. 5193 of 2002

MR YOGESH S LAKHANI for Petitioner No. 1

MS KRISHNA U MISHRA for Respondent No. 1

MR AMRISH K PANDYA for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/07/2003

ORAL JUDGEMENT

#. Rule. Mr.Pandya waives service of rule for the

respondent. With the consent of the parties, the matter is taken up for final hearing today.

#. By filing this petition, the petitioner has challenged the order passed by the Labour Court, Junagadh dated 30.4.2001 in Reference (LCJ) No.365 of 1993. By the impugned award, the Labour Court has passed the order of reinstatement in favour of the concerned workman with 25% back wages. Learned advocate for the petitioner submitted that the Labour Court should not have passed the order of reinstatement, or, in any case, the order of 25% back wages. The case of the concerned workman is that he was serving as Electrical Operator since last two years at the rate of Rs.600/- per month and that without following the procedure of law his services were arbitrarily terminated. Ultimately, the concerned workman raised an industrial dispute, which was referred to the Labour Court, Junagadh by way of Reference, which was numbered as Reference (LCJ) No.365 of 1993. The Labour Court came to the conclusion that considering the documentary evidence at Exh.18 as well as at Exh.31, it is proved that the concerned workman has served for more than 240 days. The Labour Court has found, after appreciating the evidence on record, that the concerned workman has served for more than 240 days in a particular calender year. The Labour Court also found that the Management has not produced any documentary evidence to substantiate its say that the concerned workman has not served for more than 240 days in a particular calender year. The said finding is given at page 14 in the compilation.

#. Considering the totality of the evidence on record, the Labour Court has come to the conclusion that the concerned workman has served for more than 240 days and his services were terminated without following the procedure of Section 25-F of the Industrial Disputes Act. So far as the said finding is concerned, the same, being a finding of fact, cannot be disturbed by this Court in a petition filed under Article 227 of the Constitution of India. So far as the payment of back wages is concerned, learned advocate for the respondent has submitted that the workman is ready to give up the claim for back wages totally. Under these circumstances, the order of the Labour Court is modified. So far as the order of reinstatement is concerned, the same is confirmed. So far as the order which relates to the payment of back wages is concerned, the same is set aside. Effect of this order is that the concerned workman will be reinstated in service without any monetary benefit. The petitioner is directed to reinstate the concerned workman

immediately, and, in any case, latest by 01/09/2003. It is clarified that the concerned workman will be entitled to the regular salary at the rate which he was getting when he was in service and such salary is to be paid with effect from 01/09/2003. For all other purpose, the services of the respondent workman should be treated as continuous service.

This petition is accordingly partly allowed. Rule is made absolute to the extent indicated above with no order as to costs.

(P.B.Majmudar,J)
(pathan)